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COMPENSATION COMMISSION
GOVERNING COUNCIL

Decision concerning the review of current UNCC procedures taken by the Governing Council of the United Nations Compensation Commission at its 101st meeting, held on 7 December 2000 at Geneva

The Governing Council

Decides to approve the conclusions reached by the Working Group on the review of current UNCC procedures, the text of which is annexed to the present decision.

GE.00-64587

Annex

REVIEW OF CURRENT UNCC PROCEDURES

Introduction

1. In September 2000, the Security Council reached an agreement that the current UNCC procedures be reviewed before the end of the year, taking into account the recommendations made by the Executive Secretary. Pursuant to t Governing Council's recommendation, made at the thirty-seventh session, the Working Group has held a number of informal meetings in October and Novembe 2000 for the purpose of carrying out that review, taking into account both the Executive Secretary's recommendations and the proposals put forward by delegations at the meeting held on 30 October 2000. The results of the review are contained in this report.

2. As outlined in the Secretary-General's report to the Security Council of 2 May 1991 (S/22559), the Governing Council has the responsibility for establishing guidelines on all policy matters, the Commissioners are in charge of the verification and valuation of the claims within the guideline established by the Council and subject to approval by the Governing Council and the secretariat provides services to, and carries out such tasks assign to it by, the Council and the Commissioners. The Working Group is satisfie with this division of tasks between the Governing Council, the panels of Commissioners and the secretariat and is of the opinion that the work of th Commission to date has proceeded in a fair and efficient manner. It is not the objective of the Working Group, in conducting the review of current UNC procedures, to make changes to this division of tasks.

3. The Working Group has considered the following proposals:

(a) the panels of Commissioners shall prepare separate reports on claims exceeding USD 1 billion;

(b) these reports are to be submitted to the Governing Council memb states (with translation) at least three months before the session where th are to be considered;

(c) full claim files for such claims shall be forwarded to Iraq for consideration;

(d) Iraq should be given 12 months to consider such claim files, instead of the six months at present;

(e) after having considered these claim files Iraq shall be allowed to submit written views and comments to the panels of Commissioners which a to be reviewed in the reports;

(f) provisions shall be made by the panels of Commissioners to allo Iraqi representatives to participate in oral proceedings in such claims;

(g) the Governing Council shall consider the panels' reports for such claims in the presence of representatives of Iraq who will have the right to express their views on the matter;

(h) the Iraqi request for access to funds to pay for legal and technical experts to assist in its responses to claims is to be satisfied;

(i) Council members should have more time (three months as a minimum) to review panel reports;

(j) upon the request of any member of the Council, any document used by the secretariat or the panels for the processing of the claims should be provided;

(k) a synthetic report should be submitted every six months to the Security Council on the work of the Commission, followed by an oral briefing for and consultations of the Security Council;

(l) every claim file should be made available by the panels to Iraq, so as to enable it to make its comments and observations available in writing;

(m) the time given to Iraq to respond should be increased from six months to 12 months;

(n) panels should transmit their draft recommendations to the claimants and Iraq to get their observations in a limited time period, and the final reports of the panels should be written in the light of the observations made by the parties;

(o) oral proceedings attended by the claimants and Iraqi experts should be scheduled by panels on a systematic basis;

(p) technical expertise for Iraq should be financed by a reasonable amount of the Commission's budget or its operating reserve or any other means deemed appropriate;

(q) up to three months to review reports raising significant legal or technical issue or where substantial compensation is recommended; and

(r) the provision of technical environmental expertise to Iraq for the review of the "F4" environmental claims.

4. After extensive discussions on all proposals, which included an exchange of views of a substantive nature with four Chairmen of the panels of Commissioners, the Working Group has agreed upon the following measures. The new arrangements will take effect as of the date of their adoption.

5. As these measures are being implemented immediately, the secretariat will inform the Governing Council as to any initial practical problems that may arise and where flexibility will be required, as will be the case, for instance, with the review period concerning the report on the first instalment of "F4" environmental monitoring and assessment claims.

I. TIME ALLOWED FOR THE REVIEW OF REPORTS

6. The current practice of the secretariat is to circulate the reports recommendations of the panels of Commissioners to Governing Council membe in all official UN languages, at least 30 days in advance of a session. However, depending on the nature of the report, it may be necessary to circulate certain reports and recommendations in advance of this 30-day period. The language of article 40(3) of the Provisional Rules for Clai Procedure allows for such flexibility in the sending of reports by statin that reports must be circulated "at least 30 days in advance of the sessi

7. In the opinion of the Working Group a three-month review period sho be given to the following reports:

(a) those reports containing claims with a recommended value of U 100 million or more, with the exception of claims falling outside the jurisdiction of the Commission;

(b) reports where new methodologies are elaborated; and

(c) reports that contain significant legal, factual and technical issues.

8. It is for the panels to assess in advance whether such legal, factu or technical issues exist. The secretariat will inform the Council in advance where the panels have made such conclusions as to the need to pro reports for the three-month review. In case a three-month period was not provided for in advance, the Council may decide to extend the review peri to three months whenever it is of the opinion that a particular report contains significant legal, factual or technical issues.

9. The three-month review period will start to run from the time that report is available in all official UN languages.

10. In order to assist the Council members in the review of the reports referred to in paragraph seven, the secretariat will make a presentation the claims contained in those reports at the commencement of the three-mo review period. The secretariat is encouraged to continue the current practice of providing explanations and information regarding recommended awards to the members of the Governing Council.

11. The Council members will use this additional time to facilitate a decision on the panel's recommendations at the Council session following three-month period.

12. The panels of Commissioners will prepare a separate report for each claim with a recommended value of USD 1 billion or more.

13. The Governing Council encourages the panels to provide it in their reports, to the extent possible, with non-confidential factual and techni *information that served as the basis of the panels'* recommendations, thus facilitating the Council's review.

II. TRANSMISSION OF CLAIM FILES TO IRAQ

14. The secretariat provided a briefing to the Working Group on the current practice with respect to the classification of claims as being "unusually large or complex" and the transmission of claim files to Iraq, and outlined the criteria in a note that was distributed to members on 31 October 2000. It is the Working Group's understanding that the criteria used by the panels to determine whether to transmit a claim file to Iraq normally include:

(a) the Government of the Republic of Iraq is a party to a contract forming part of the subject matter of the claim; or

(b) if the situs of the alleged loss is in Iraq; or

(c) if the Panel determines that the transmission of the claim file will otherwise facilitate the Panel's verification and valuation of the claim; or

(d) the amount claimed is more than USD 100 million.

15. It is the understanding of the Working Group that, when the criteria referred to in paragraph 14 are fulfilled, as a practical matter, full claim files (consisting of the claim form, statement of claim and all of the documents provided by the claimant as attached to the statement of claim) are sent to Iraq unless such claims fall outside the jurisdiction of the Commission.

16. The Working Group is of the opinion that the discretion to send claim files to Iraq should remain with the panels of Commissioners. However, the panels are encouraged to continue to apply the existing criteria relating to the transmission of files to Iraq.

17. The Working Group would welcome the discussion of this issue by the Chairmen of the panels of Commissioners at their next annual joint meeting, to help ensure consistency in the transmission of files.

18. At the June 2000 session, the Governing Council authorized the panels to make claim files available to Iraq prior to the formal commencement of the review of an instalment of claims. This decision may allow for some flexibility in the application of the six-month response rule. The Governing Council encourages the panels to make use of this flexibility to the maximum extent possible. However, the Working Group recommends that an additional six months should be given to Iraq to respond to claims with an asserted value of USD 1 billion or more that have not yet been taken up by the panels, or are under preparation, with the exception of claims falling outside the jurisdiction of the Commission.

19. Iraq's written responses concerning the claims under consideration by the panel will be reflected by the panels in their reports.

III. ORAL PROCEEDINGS

20. The secretariat explained the existing practice with respect to the convening of oral proceedings. Pursuant to article 36 of the Rules, panels of Commissioners may invite parties to present their views in oral proceedings.

21. The Working Group agrees that discretion in convening oral proceedings remains with the panels of Commissioners. The panels will schedule oral proceedings where the claims have an asserted value of USD 1 billion or more, with the exception of claims falling outside the jurisdiction of the Commission or that are otherwise not compensable. The Governing Council encourages the panels to also schedule oral proceedings where the panels have determined that it would be useful to hear the views of the claimants and Iraq, and where:

(a) the claims contain significant technical, legal and factual issues; or

(b) the claims are substantive "F4" environmental claims.

IV. TECHNICAL ASSISTANCE

22. Taking into account the Executive Secretary's recommendations, the Working Group discussed the issue of making funds available to Iraq for purposes of hiring experts to assist in preparing Iraq's responses to claims in general and in particular the environmental claims. It has decided to consider further, with the assistance of the secretariat, various proposals relating to the provision of assistance to Iraq, noting that some Council members indicated that such proposals should not relate to claims other than the "F4" claims. The Working Group will continue its efforts to formulate acceptable specific recommendations, at the latest at the thirty-ninth session of the Governing Council, to be held in March 2001. In the meantime the Working Group recommends that the Governing Council should urge the "F4" panel to use its experts to ensure the full development of the facts and relevant technical issues, as well as to obtain the full range of views including those of the claimants and Iraq.